

FCC MAIL SECTION
Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 19 3 51 PM '94

MM Docket No. 94-78

In the Matter of

Amendment of Section 73.202(b), RM-8472
Table of Allotments,
FM Broadcast Stations.
(Cloverdale, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1994;

Released: July 13, 1994

Comment Date: September 3, 1994

Reply Comment Date: September 20, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Pulaski Broadcasting, Inc. ("petitioner"), seeking the allotment of FM Channel 254A to Cloverdale, Alabama, as that locality's first local aural transmission service. Petitioner states its intention to apply for Channel 254A if it is allotted to Cloverdale, as requested.

2. In support of the proposal, petitioner states that Cloverdale is an incorporated town that is attributed with a population of 610 persons in the 1990 U.S. Census. Additionally, petitioner advises that Cloverdale has its own local government, police protection and a volunteer fire department.

3. Section 307(b) of the Communications Act of 1934, as amended, requires the Commission to allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable

population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Contrary to petitioner's assertion, we are unable to confirm that Cloverdale is listed as an incorporated community in the U.S. Census.¹ Rather, we note that Cloverdale is listed in the Census as a Division of Lauderdale County.² In view of the noted discrepancy, petitioner should provide evidence to demonstrate that Cloverdale is incorporated, or that it contains other indicia of a community such as a newspaper, social, economic or cultural organizations, municipal services, or governmental units that identify themselves specifically with Cloverdale. See, e.g., *Gretna, et al., Florida*, 6 FCC Rcd 633 (1991); *Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Statenville, Georgia*, 5 FCC Rcd 2685 (1990); and *East Hemet, et al., California*, 4 FCC Rcd 7895 (1989).

4. We believe the petitioner's proposal to provide a first local aural transmission service to Cloverdale, should it ultimately be deemed a community for allotment purposes, merits further consideration. Therefore, as indicated *infra*, we invite comments on the proposal.

Technical Statement

5. A staff analysis has determined that Channel 254A can be allotted to Cloverdale in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules without a site restriction at coordinates North Latitude 34-56-19 and West Longitude 87-46-17.³

6. In view of the above, we solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to include Cloverdale, Alabama, as follows:

City	Channel No.	
	Present	Proposed
Cloverdale, Alabama	--	254A

7. IT IS ORDERED, That the Secretary shall send a copy of this Notice to the licensee of Station WZLQ(FM) as follows: San Dow Broadcasting, P.O. Box 2639, Gulfport, Mississippi 39503.

¹ We do note that Cloverdale is listed in the 1994 Rand McNally Commercial Atlas and Marketing Guide ("Atlas") which attributes that locality with a population of 610 persons. However, mere geographic location is not sufficient to establish "community" status. See, *Vimville, Mississippi*, 48 FR 5974 (1983), *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991), *Trade, Tennessee and Beach Mountain, North Carolina*, 6 FCC Rcd 5835 (1991). Additionally, although the Atlas reflects the existence of a zip code and post office for Cloverdale, neither of those components are sufficient to establish "community" status. See, *Graham, Washington*, 7 FCC Rcd 1676 (1992); *Jackpot, Nevada*, 6 FCC Rcd 4207 (1991); and *Coker, Alabama*, 43 RR 2d 190 (1978). No indication of Cloverdale's incorporation or its existence as a census designated place "CDP" is given in the Atlas.

² Based upon U.S. Census data, a census county division ("CCD") is a geographical area that has been delineated for the purpose of gathering data for inclusion in the Census. Further, the Census Bureau defines a CCD as having no legal function nor is it a governmental unit. Moreover the boundaries of a CCD are usually delineated to follow visible features and in most cases coincide with census tract or block numbering area

boundaries. Additionally, CCD's are named based on a place, county, or familiar local name that identifies its location. Cf. *Hollywood and California, Maryland and King George, Virginia*, 3 FCC Rcd 4043 (1988) (area comprised of collective Census Enumeration Districts "CED's" does not constitute a single community for allotment purposes).

³ The designated site for Channel 254A at Cloverdale does not eliminate a short spacing to the licensed site for Station WZLQ(FM), Channel 253C1, Tupelo, Mississippi, at coordinates North Latitude 34-18-09 and West Longitude 88-42-21. However, the proposal does meet the minimum distance separation requirements to the site specified in the construction permit issued to Station WZLQ(FM) at coordinates North Latitude 34-10-05 and West Longitude 89-09-23. Therefore, in the event the petitioner's proposal herein is ultimately adopted, the issuance of a license for Channel 254A at Cloverdale, Alabama, may be withheld until Station WZLQ(FM) is licensed on Channel 253C1 at the site specified in its construction permit. We will serve a copy of this Notice on the licensee of Station WZLQ(FM).

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **September 3, 1994**, and reply comments on or before **September 20, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner and its consultant, as follows:

Hershel Lake
President, Pulaski
Broadcasting, Inc.
P.O. Box 738
Pulaski, TN 38478

Kirk A. Tollett
Commsouth Media
Associates
4001 Highway 78 East
Jasper, AL 35501
(Consultant to Petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.